THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 25643 of 1995

Dated: 21.11.2006

Between:

S. Arjuna Rao

… Petitioner

AND

M/s. Batliboi & Co., Ltd & another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 25643 of 1995

ORDER:-

The petitioner in this writ petition challenges the Award of the 2nd respondent in I.D.No.21 of 1993 dated 31.03.1995 whereby the dispute raised by the petitioner questioning termination of his services by the 1st respondent was decided against the petitioner.

Shorn of unnecessary details, the petitioner, who was working with the 1st respondent from 01.05.1962, stopped working from 26.03.1990 with the 1st respondent. The petitioner's case is that the 1st respondent has not allowed him to work when he reported to duty on 23.06.1990 after being on leave from 19.03.1990 to 25.03.1990. Terming this act as being in violation of the provisions of Industrial Disputes Act, 1947 (for short "the Act"), the petitioner raised an industrial dispute. Before the 2nd respondent, the 1st respondent contended that the petitioner, who was working as packer, committed theft of articles in the godown and it came to light when stock verification was done, which showed that there was discrepancy in the stocks of material of different kinds worth Rs.1,79,368/-.

Confronted, the petitioner gave a letter dated 26.03.1990 admitting to his stealing the goods for his personal gain and that on the

same day he gave a letter of resignation which was accepted by the 1st respondent with effect from 28.03.1990 and the petitioner was relieved from duties on the said date.

The 2nd respondent framed two points, which are as under:

> "1. Whether this petition under Section 8-A(2) of the I.D. Act is maintainable?
>
> 2. Whether the petitioner was prevented from performing his duty as alleged by him or whether he resigned his job as contended by the respondent?"

As regards the first point, it was held in favour of the petitioner. With respect to the second point, the 2nd respondent has appreciated the evidence of the petitioner, who examined himself as WW.1, and the evidence adduced on behalf of respondents viz., MWs.1 to 3. On the basis of the appreciation of the evidence, the 2nd respondent held that the petitioner has voluntarily resigned to his employment through Ex.W3 dated 26.03.1990 and therefore there can be no question of violation of any of the provisions of the Act. With regard to the claim of the petitioner for the payment of gratuity and other statutory benefits, which the petitioner is entitled to, the 2nd respondent held that the said claim can be gone into in a petition filed by the petitioner under Section 33-C (2) of the Act.

Sri Srinivas Karra, learned counsel appearing for the petitioner, fairly submitted that as regards the finding relating to the resignation of the petitioner, as the same is based on appreciation of evidence by the 2nd respondent, this Court under Article 226 of the Constitution of India cannot re-appreciate the evidence and come to a different finding. The learned counsel, however, submitted that the petitioner is entitled to

the statutory benefits, which the 1st respondent has unduly withheld purportedly towards the value of the goods allegedly stolen by the petitioner. According to him, these statutory benefits cannot be withheld by the 1st respondent.

As rightly held by the 2nd respondent, the claim with respect to the statutory benefits ought to be a subject matter of a separate application under Section 33-C (2) of the Act. The learned counsel for the petitioner stated that in view of the pendency of this writ petition, his client could not file such an application.